IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.711 OF 2004

IN

REVIEW PETITION NO.35 OF 2004

AND

NOTICE OF MOTIONI NO.2509 OF 2001

IN

SUIT NO.4913 OF 2000

Mrs.Nargis M. Oomerbhoy. ... Appellant
(Org.Applicant-Petitioner)

V/s.

Majid Ahmedbhai Oomerbhoy & ors. .. ... Respondents
(Org. respondents)

Mr.Y.S. Jahagirdar, Sr.Counsel with Mr.Pradeep Sancheti and Mr.Uday Singh i/by M/s.Rustomji & Ginwala for appellant.

Mr.J.B. Chinai, Sr.Counsel with Mr.Sanjay Jain i/by M/s.Malvi Ranchoddas & Co. for res.No.1.

CORAM : H.L. GOKHALE &
S.C.DHARMADHKARI, JJ.

DATED : 7TH FEBRUARY 2005

P.C. :

1. Heard Mr.Jahagirdar for the appellant.

Mr.Chinai appears for respondent No.1.

2. This appeal seeks to challenge the order dated 12th July 2004 passed by the learned Single Judge on Notice of Motion No.2509 of 2001 as also the order dated 9th September 2004 passed on Review Petition No.35 of 2004.

3. Mr.Chinai, learned Counsel appearing for respondent No.1, points out that an appeal would not lie against an order rejecting the Review Petition and if the order dated 12th July 2004 is to be challenged, the appellant must seek condonation of delay.

4. Having noted this objection, what we find is that the impugned order passed on 12th July 2004 directs the Court Receiver to fix the monthly compensation to be paid by the appellant herein with respect to two flats which are in dispute. The appellant is claiming to be the owner and in possession of the two flats, whereas the case of respondent No.1 is that the two flats were rented out to the Firm, of which dissolution is sought in the suit filed by the husband of the appellant being Suit No.4913 of 2000.

5. Having heard both the learned Counsel and

having perused the impugned order, in our view, the proper course will be that as and when the Receiver fixes the monthly compensation, the appellant may challenge the same, if aggrieved by the said determination. The appellant is raising the question as to whether an owner in possession could be made to pay any such compensation. That issue will be available to the appellant to be raised when the appellant seeks to challenge the compensation fixed. A determination on that issue will, of course, be after taking into consideration the submissions of both the parties. There is no need to interfere at this stage.

6. Appeal is dismissed with the above observations.

(H.L. GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)